

EXHIBIT A

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[1] Q: After June or it could have been in June?
[2] A: It could have been in June, yeah.
[3] Q: Do you remember the circumstances in which you
[4] heard about intelligent design? Was it, for
[5] example, a public school board meeting, a
[6] discussion with a school board member or
[7] otherwise?
[8] A: I don't.
[9] Q: Do you remember anything about the substance of
[10] what you heard the first time you heard about
[11] it?
[12] A: No.
[13] Q: The first time you heard about it, was it in
[14] the context of the Dover Area High School
[15] biology curriculum?
[16] A: I don't remember that.
[17] Q: When was the first time you heard of the book
[18] Of Pandas and People?
[19] A: When Bill gave it to me, Mr. Buckingham.
[20] MR. ROTHSCHILD: Let me mark this document
[21] as P-9.
[22] (P Deposition Exhibit Number 9 marked for
[23] identification.)
[24] BY MR. ROTHSCHILD:
[25] Q: Do you recognize the document we've marked as

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[1] P-9?
[2] A: Yes.
[3] Q: Is this a memorandum that you received on or
[4] around April 1st, 2003 from the principal,
[5] Trudy Peterman?
[6] A: Yes.
[7] Q: Could you review this document and let me know
[8] whether there's anything in it that you —
[9] well, review the document and let me know
[10] whether there's anything in it you think is
[11] incorrect.
[12] A: Okay. There are a number — just the first two
[13] pages or do you want me to do the rest?
[14] Q: I think we can probably just look at the first
[15] two pages for purposes of my question.
[16] A: There are a number of errors and inaccuracies.
[17] Q: Could you describe them?
[18] A: First, Trudy — Dr. Peterman was not at the
[19] meeting — was not at the — or was not present
[20] when I had a conversation with Mrs. Spahr that
[21] generated this memo.
[22] I never told Mrs. Spahr that the board
[23] wanted creationism taught. Dr. Peterman in
[24] many instances overreacts to instances and
[25] jumps the gun and I think this is a good

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[1] example of that.
[2] My conversation with Bert Spahr was simply
[3] a heads up that there was still, you know, some
[4] talk about some board members of presenting
[5] some alternative theory. I did not say that
[6] there was creationism, nor did any board member
[7] ever say to me that they wanted creationism
[8] taught in the classroom.
[9] Additionally, she talks about creationism
[10] should still be — Dr. Peterman says I advise
[11] and continue to mention that creationism is
[12] another alternate theory of evolution. That's
[13] Dr. Peterman acting on her own.
[14] The only information I have is that I did
[15] know that some of our teachers before teaching
[16] the evolution unit would mention other
[17] theories. They might mention creationism, but
[18] there was no — at this point there was no
[19] directive from the board or administration for
[20] them to do so.
[21] So the way I reacted to this is I ignored
[22] this because the board was not putting forth
[23] any definite plans or content or curriculum to
[24] be implemented.
[25] Mr. Bonsell at a board retreat, where

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[1] there's administrators all around, had, just in
[2] talking about something, mentioned this 50/50.
[3] He did not talk to me personally about that,
[4] nor direct that to happen. And I simply took
[5] that back to Bert Spahr just to give her a
[6] heads up that there are board members that are
[7] still looking at alternatives that are being
[8] presented.
[9] Q: You've got a lot packaged in here. First of
[10] all, you said ignored this. Can I take from
[11] that that you did not respond to Ms. Peterman?
[12] A: Correct.
[13] Q: Verbally or in writing?
[14] A: Correct.
[15] Q: Did you have any follow-up conversation with
[16] Ms. Spahr in reaction to this memo?
[17] A: That I don't remember, but I would be talking
[18] to Mrs. Spahr continually anyway as long as
[19] there was some interest in presenting
[20] alternative theories and since we were working
[21] on the science curriculum.
[22] Q: This is a memo from April 1st, 2003 and you
[23] said — the way you started your answer was
[24] that there was still some talk about presenting
[25] an alternative theory. What do you mean still

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[1] made that statement?

[2] A: We're reading that statement making students

[3] aware of intelligent design and that there's a

[4] book in the library, if they wanted to research

[5] that they could.

[6] Q: When the statement is read to the students and

[7] they are being made aware of intelligent

[8] design, is it your testimony that that is not

[9] teaching the students?

[10] A: Yes.

[11] Q: What do you call that doing?

[12] A: Making them aware.

[13] Q: Do you understand the students to be learning

[14] when that statement is made?

[15] A: They're learning that they're aware of a book

[16] in the library.

[17] Q: So they're learning, but not being taught?

[18] A: Correct.

[19] Q: In the news article I was asking you to look at

[20] a couple of paragraphs down it says, The

[21] district has not rejected the proposed new

[22] textbook, Baksa said, but it will continue to

[23] look for a book that will make everyone happy.

[24] Was that an accurate characterization of

[25] what you said?

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[1] A: Yes.

[2] Q: And when you were referring to the proposed new

[3] textbook, were you referring to the Miller

[4] Levine book recommended by the teachers?

[5] A: Yes.

[6] Q: And when you said that the district is

[7] continuing to look for a book that will make

[8] everyone happy, what did you mean by that?

[9] A: A book that would be acceptable to the board

[10] curriculum committee and the teachers.

[11] Q: What was your understanding of what it would

[12] take in a book to make everyone happy?

[13] A: I think the board curriculum committee was

[14] concerned with the presentation of Darwin and

[15] so they were examining the chapters that dealt

[16] with Darwin.

[17] Q: And what was your understanding of what they

[18] were concerned about?

[19] A: That Darwin was taught as a fact and that it

[20] was overstated as a given with no mention of

[21] any shortcomings or gaps or problems.

[22] Q: And did you personally ever review the biology

[23] textbook to reach your own conclusion about

[24] whether the book, in fact, did identify gaps or

[25] shortcomings in the theory?

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[1] A: Yes.

[2] Q: And what conclusion did you come to?

[3] A: The 2004 edition of the Miller Levine does

[4] mention gaps.

[5] Q: Is that different from earlier versions being

[6] used by — that were being used by the school

[7] district?

[8] A: The 2004 edition of the Miller Levine made a

[9] number of changes that softened the

[10] presentation of Darwin.

[11] Q: So, in fact, the textbook that the teachers

[12] were recommending did, in fact, address what

[13] the school board was worried about, whether the

[14] gaps and shortcomings were being identified?

[15] MR. GILLEN: Objection to the question.

[16] It's misleading, characterizes the board's

[17] position without adequate foundation.

[18] BY MR. ROTHCHILD:

[19] Q: You can answer.

[20] A: The teachers recommended the 2004 Miller Levine

[21] and the board approved that text.

[22] Q: And that text does identify gaps, correct?

[23] A: Yes.

[24] Q: And shortcomings?

[25] A: I don't remember the word shortcomings being

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[1] used, but gaps is used.

[2] Q: Okay. So given that the book identifies gaps,

[3] is there any reason why the students needed to

[4] be told separately Darwin's theory has gaps —

[5] MR. GILLEN: Objection, calls for

[6] speculation.

[7] BY MR. ROTHCHILD:

[8] Q: — in the statement that you read to the

[9] students on January 18th?

[10] A: Could you ask that again?

[11] Q: Yes. If the book identifies gaps in Darwin's

[12] theory of evolution, why is the district making

[13] a point to tell the students in a statement

[14] read before the subject of evolution is covered

[15] Darwin's theory has gaps?

[16] MR. GILLEN: Objection, calls for

[17] speculation.

[18] A: I was directed to work with the board and the

[19] teachers to develop a statement that the

[20] teachers would read to address the concerns

[21] that Darwin's theory is not taught as a fact,

[22] that other alternative theories of evolution

[23] were presented and that students being made

[24] aware of the book Of Pandas and People and that

[25] resulted in that statement being — having

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[1] the curriculum, nobody has ever done that in
[2] any meetings of the board or the board
[3] curriculum committee?

[4] A: Nobody has —

[5] Q: Said here's why we should present intelligent
[6] design to the students.

[7] A: Intelligent design was suggested just to be as
[8] an example of one of the other theories,
[9] alternative theories other than Darwin's.

[10] Q: Mr. Baksa, I could suggest that another theory
[11] of the development of species is they were all
[12] made out of playdough, right, I mean I could
[13] say that, right, and you would agree with me
[14] that that's a scientifically unsound
[15] proposition? Is that fair?

[16] A: Are we talking about playdough now?

[17] Q: I'm not talking about the philosopher. I'm
[18] talking about the stuff that's like clay.

[19] A: In the discussions about language that we would
[20] use, intelligent design was brought up as when
[21] we're making students generally aware of other
[22] theories, intelligent design was brought up as
[23] an example. And I don't remember presenting it
[24] in that way that being challenged. I think
[25] that was generally accepted.

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[1] Q: Okay. But I assume that when you're trying to
[2] develop science curriculum you're actually —
[3] and you're making students aware of other
[4] theories you're trying to make them aware of
[5] scientific theories, correct?

[6] A: Yes. And it was my understanding at the June
[7] meeting that the teachers were okay with
[8] language that included intelligent design. So
[9] I would have — again, my goal was to try to
[10] come to some agreement between the concerns of
[11] the board and the language teachers could live
[12] with. So I thought we — that was acceptable
[13] to them.

[14] Q: Okay. But at that June meeting nobody
[15] explained what intelligent design was or what
[16] its status was in the scientific community at
[17] large or anything like that?

[18] A: I don't remember any of them doing that.

[19] Q: And that never happened after that either,
[20] correct, as far as you know?

[21] A: Yes.

[22] Q: I'm correct?

[23] A: You're correct.

[24] Q: And originally it was your understanding that
[25] the science teachers were okay with this

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[1] language, but in August it turned out that
[2] regardless of what they had said before,
[3] they're not okay with it?

[4] A: Correct.

[5] Q: And other than Ms. Spahr indicating that the
[6] teachers hadn't been consulted and didn't agree
[7] with this, did she explain what's wrong with
[8] intelligent design?

[9] A: Mrs. Spahr from the very beginning, from
[10] documents 897, which include reference to
[11] intelligent design, in my conversations with
[12] Mrs. Spahr she made no distinction between
[13] intelligent design and creationism. For her
[14] they were synonymous.

[15] Q: And did she explain why she held that view?

[16] A: From her research that she had done she felt
[17] that legally we would not be able to teach
[18] intelligent design because it's just
[19] creationism.

[20] Q: And did she express that view at either this
[21] June board meeting or — the June curriculum
[22] committee meeting or the August curriculum
[23] committee meeting?

[24] A: I know she did to me. I'm not sure if she did
[25] at either of those other meetings.

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[1] Q: In these notes from this August meeting on Page
[2] 58 it says, Call Russell - did they say what
[3] schools are using it.

[4] Did you make an inquiry to the solicitor
[5] about whether other schools were using this
[6] textbook?

[7] A: We did ask our solicitor to see if there were
[8] any other schools using the book, to give us an
[9] opinion on its use as a classroom set or to
[10] distribute it to each individual student, if
[11] there were any cases involving the teaching of
[12] intelligent design and also asked for a
[13] specific law firm's history.

[14] Q: And was that the Thomas More Law Center?

[15] A: I think so, yes.

[16] Q: In terms of finding out whether other schools
[17] used it, did you get an answer to that
[18] question?

[19] A: The only school that I found — that came to my
[20] attention that used it was Tomball.

[21] Q: Did you also make a call to anybody at Liberty
[22] University relating to intelligent design or
[23] Pandas, a Dr. Gillen maybe?

[24] A: Yes. Dr. Gillen taught at Tomball.

[25] Q: In the answers to interrogatories it says that

statement that was read to students in the biology classes, that a theory in science is a general conclusion or assumption drawn after observation.

Q: And, you know, the students are being taught it's a theory, not a fact. And that language is not being used for any other theory that's being taught to Dover students, correct? The curriculum hasn't changed so that students are told that germ theory is a theory, not a fact, or the theory of gravity is a theory, not a fact, or atomic theory is a theory not a fact. Right?

A: That's correct.

Q: Only evolution is being singled out. Is that fair?

A: That's correct.

Q: Has anybody in the board ever communicated why of all the scientific concepts being taught to Dover students evolution is being singled out for the qualification that it's a theory, not a fact?

A: Not to me.

Q: And in your understanding of the scientific terms of theory and fact, could a scientific

theory ever graduate to a fact?

A: I have no idea in the scientific world what qualifies something to move from one stage to another or even what the definition of either of them might be in the scientific world.

Q: Did any school board member ever explain why they wanted language that it was a theory, not a fact?

A: Nothing other than they felt that that was an erroneous presentation in the textbook, to present it as such.

Q: What was erroneous?

A: That it was being presented as a fact when, in fact, it's a theory that still hasn't been ultimately proven to be a fact.

Q: In all the page sites that school board members called to your attention did they ever show you text in the textbook that was adopted in which evolution was called a fact, not a theory?

MR. GILLEN: Objection to the characterization of his testimony to the extent it implies more than one board member did that. Answer, Mike.

A: Could you —

BY MR. ROTHSCHILD:

Q: Did any school board member ever pick up this textbook and say, look, in here it says that evolution is a fact, not a theory or it's a fact and a theory? Is there any text that they pointed you to that made that assertion?

A: I don't remember specific pages, but I do think I remember both Mr. Bonsell — I know for sure Mr. Bonsell felt that there was language in there — I remember him saying that there was talk about evolution without saying it's a theory, that they were omitting the word theory. So he felt that strengthened the case to present it as a fact. And Mr. Bonsell would have been looking at the edition before the 2002.

Q: But that wouldn't really matter for the curriculum item you developed because the edition you were using was the 2004 edition, correct?

A: In August, yes.

Q: And Mr. Baksa, I'm looking at the teacher's version of the biology textbook, but I am fairly confident that in this respect it's similar to the student's version, that, in fact, the heading, as you start your study of

evolution, is Darwin's Theory of Evolution.

A: Um-hum.

Q: So in that respect it's not misleading the students at all, it's in marquee and klieg lights presented as a theory, correct?

A: I have no idea.

Q: Do you understand intelligent design to be a scientific theory?

A: I understand professors like Michael Behe at Lehigh University are either proponents or researchers for intelligent design. My knowledge of intelligent design and the scientific community is fairly limited. I haven't been exploring it for a long period of time. So I don't know that I could fully answer that other than knowing a few individuals who are involved in intelligent design.

Q: Do you understand that there's a distinction between something that scientists say and something being a scientific theory? Not everything scientists say is a scientific theory. You would agree with that, right?

A: Okay.

Q: Do you agree with that or do you just not know

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[1] one way or the other?

[2] A: I mean, I'm not in a position to judge what the
[3] scientific community, how they — the standards
[4] they set and the judgments they make about
[5] their colleagues and their research and the
[6] status it has. I just have no knowledge of
[7] that.

[8] Q: And how would you — what would it take for you
[9] to feel qualified to answer the question
[10] whether intelligent design is a scientific
[11] theory? What expertise would you feel you
[12] would have to have or what resource would you
[13] feel you would need to look to to make a
[14] determination for yourself whether intelligent
[15] design is a scientific theory?

[16] A: I don't know.

[17] MR. GILLEN: Objection. It calls for
[18] speculation. If you can answer, do.

[19] A: Yeah, I don't know.

[20] BY MR. ROTHSCILD:

[21] Q: Do you feel that you could make a judgment
[22] about whether intelligent design is, in fact, a
[23] scientific theory by listening to the opinions
[24] of the members of the Dover Area School Board?

[25] A: I wasn't making — I wasn't asked to make a

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[1] judgment. What I was asked to do was to work
[2] with the board curriculum committee and the
[3] whole board and the teachers to develop
[4] language that was agreeable in the curriculum,
[5] to find a textbook that was agreeable to both
[6] and to develop a statement that would be read
[7] to the students that would be agreeable to them
[8] and that was my role.

[9] MR. ROTHSCILD: Can we mark this as an
[10] exhibit, please?

[11] (P Deposition Exhibit Number 19 marked for
[12] identification.)

[13] BY MR. ROTHSCILD:

[14] Q: Do you recognize the document we've marked as
[15] P-19?

[16] A: Yes.

[17] Q: And what is it?

[18] A: This is a news release that the district sent
[19] to all of our residents.

[20] Q: And who prepared this document?

[21] A: Dr. Nilsen.

[22] Q: Did you have any involvement with it?

[23] A: No.

[24] Q: Do you know if anybody else had any involvement
[25] with it?

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[1] A: I believe my secretary Amy Aumen formatted it.

[2] Q: Do you know whether Mr. Nilsen created this on
[3] his own or with the aid of others?

[4] A: I believe he created this in conjunction with
[5] Thomas More.

[6] Q: If you turn to the second page there is a
[7] frequently asked question, What is the theory
[8] of Intelligent Design. And it says, The theory
[9] of intelligent design is a scientific theory
[10] that differs from Darwin's view and is endorsed
[11] by a growing number of credible scientists.

[12] Do you know what the Dover Area School
[13] District based its assertion that intelligent
[14] design is a scientific theory on?

[15] A: No.

[16] Q: Going back to the development of curriculum.
[17] Out of this August meeting you had taken on the
[18] task to develop an edition to the curriculum
[19] with the teachers, correct?

[20] A: Yes.

[21] Q: And did that, in fact, occur?

[22] A: Yes.

[23] Q: And in terms of who actually created the text
[24] for it, who did that, you, the teachers or
[25] both?

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[1] A: I wrote a first draft and I gave it to the
[2] teachers.

[3] (P Deposition Exhibit Numbers 20 and 21
[4] marked for identification.)

[5] BY MR. ROTHSCILD:

[6] Q: Do you recognize the two exhibits we've marked
[7] as 20 and 21?

[8] A: 20 and 21? I don't have those.

[9] Q: Exhibits 20 and 21.

[10] MR. GILLEN: Yes, you do.

[11] A: Oh, oh.

[12] BY MR. ROTHSCILD:

[13] Q: And are these the product of your work with the
[14] science department on developing a modification
[15] to the biology curriculum?

[16] A: Yes, but not entirely.

[17] Q: And what's missing?

[18] A: There's another teacher draft.

[19] Q: And chronologically here where does that
[20] teacher draft fall, before September 20th,
[21] before September 21st?

[22] A: It would be a draft created on October 18th.

[23] Q: October 18th, okay. So up till — sorry, I'll
[24] back up. Am I correct that the documents we're
[25] looking at as 20 and 21 are identical except

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- [1] And I believe I remember Mrs. Spahr
[2] talking and Mrs. Miller talking. I can't say
[3] whether it was before the vote or after the
[4] vote.
[5] Q: Did anybody who was advocating a vote for
[6] version I guess it was 11A get up and speak in
[7] support of it?
[8] A: No, I don't remember anyone saying anything for
[9] 11A.
[10] Q: In articles after the resolution was voted on
[11] Angie Yingling has been quoted as saying that
[12] members of the board suggested that she would
[13] be atheist or unChristian if she didn't vote
[14] for the intelligent design resolution. Did you
[15] observe any remarks of that kind?
[16] A: Yeah.
[17] Q: And Casey Brown has been quoted as saying that
[18] school board members asked her whether she is
[19] born again. Did you observe anything like
[20] that?
[21] A: No.
[22] Q: Are you aware that the Discovery Institute
[23] released a press release criticizing Dover for
[24] passing the resolution it did?
[25] A: Yes.

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- [1] Q: And how did you become aware of that?
[2] A: I don't remember that.
[3] Q: Did you participate in any discussions with
[4] anybody at the school district or school board
[5] about the Discovery Institute taking that
[6] position?
[7] A: I might have talked to Dr. Nilsen about it.
[8] Q: And describe your conversation.
[9] A: I really don't recall specifics of that
[10] conversation. I just know that we did
[11] recognize that they had this press release, but
[12] I don't really recall specifically what we
[13] talked about.
[14] Q: Are you aware that members of the Discovery
[15] Institute communicated with the school district
[16] directly about their curriculum change?
[17] A: Yes.
[18] Q: Have you participated in any of those
[19] discussions?
[20] A: I was at a meeting with a representative from
[21] the Discovery Institute.
[22] Q: And when did that meeting occur?
[23] A: I guess prior to — sometime after the October
[24] 18th I think.
[25] Q: Was it prior to or after the lawsuit was filed?

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- [1] A: Prior to.
[2] Q: Where did that meeting occur?
[3] A: At the administration office conference room.
[4] Q: Who was there?
[5] A: I was, Dr. Nilsen, Mr. Bonsell and I believe
[6] Mr. Buckingham and Mrs. Harkins.
[7] Q: Who participated on behalf of the Discovery
[8] Institute?
[9] A: I forget his name.
[10] Q: Was it someone named Seth Cooper?
[11] A: Yes.
[12] Q: Do you know who initiated the meeting?
[13] A: No.
[14] Q: Was the discussion about the legality of
[15] teaching of the curriculum or the pedagogical
[16] merits of the curriculum?
[17] A: The discussion, Discovery Institute felt that
[18]
[19] MR. GILLEN: Wait. To the extent you
[20] understood you were receiving legal advice from
[21] Mr. Cooper with the board meeting, as a board
[22] for the purpose of getting that legal advice,
[23] don't disclose that information.
[24] BY MR. ROTHSCHILD:
[25] Q: I think I asked you the question, the

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- [1] foundation for that, was the discussion of the
[2] board curriculum in the nature of did you
[3] discuss whether the change was legal or did you
[4] discuss the scientific or pedagogical merits of
[5] the change of the board curriculum?
[6] MR. GILLEN: You can answer that.
[7] A: Legal.
[8] BY MR. ROTHSCHILD:
[9] Q: Only legal?
[10] A: Yeah, I would say so, yeah.
[11] Q: Do you have any knowledge of how this meeting
[12] was arranged?
[13] A: No.
[14] Q: Do you know who arranged the meeting?
[15] A: No.
[16] Q: When this meeting began, and I'm going to tread
[17] carefully here. So, you know, try an answer
[18] just my limited question. We'll take it step
[19] by step. Who began the discussion?
[20] A: I think it was Mr. Cooper.
[21] Q: Was there any part of that discussion that
[22] included discussion that the Discovery
[23] Institute would represent the school district
[24] in any litigation over the policy?
[25] MR. GILLEN: Eric, based on the

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(1) The Myth of Separation by David Barton to
(2) review from board members. Why did you call
(3) his attention to that fact in response to this
(4) e-mail?

(5) A: Generally, his e-mail speaks to the involvement
(6) of the board in the curriculum. And, you know,
(7) the board — what I was saying back to Mr. Neal
(8) is that social studies is next year and Mr. —
(9) I believe it was Mr. Bonsell has already
(10) expressed concerns about aspects of the social
(11) studies curriculum.

(12) At this point Mr. Neal is aware of that.
(13) Dr. Nilsen and Mr. Bonsell did meet with Mr.
(14) Hoover and Mrs. Neal and discuss aspects of the
(15) curriculum and I believe Mr. Hoover was
(16) familiar with the book and had read the book
(17) already.

(18) Q: Was it Mr. Bonsell who gave you — you said you
(19) were given this book by the board members. Who
(20) were the board members who gave it to you?

(21) A: I think it was just Mr. Bonsell.

(22) Q: And did he say anything to you when he gave you
(23) this book?

(24) A: Actually, it might have been given to — I
(25) don't remember him saying anything to me and it

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(1) actually might have been given to Dr. Nilsen
(2) first and he gave it to me. I don't remember.

(3) Q: And in your e-mail you say feel free to borrow
(4) my copy to get an idea of where the board is
(5) coming from. At the time you sent this e-mail
(6) had you examined the book?

(7) A: Just skimmed it.

(8) Q: And what did you mean by, you know, get an idea
(9) of where the board is coming from?

(10) A: Just that reading the book might help explain
(11) what concerns the board might have in our
(12) existing social studies curriculum.

(13) Q: I mean, having skimmed the book and heard from
(14) Mr. Bonsell, what did you understand those
(15) concerns to be?

(16) A: I never met with Mr. Bonsell about this.

(17) Q: Do you know what The Myth of Separation is
(18) about?

(19) A: In a vague sense.

(20) Q: What's that?

(21) A: That the separation of church and state might
(22) never have been the clear intent of our
(23) founding fathers. I couldn't explain it more
(24) than that.

(25) Q: And you said that there's since been meetings

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(1) with you and Mr. Bonsell and Mr. Hoover and Mr.
(2) Neal?

(3) A: No, I was never at those meetings.

(4) Q: Okay. So you were not part of them. Did
(5) anybody report to you what was said in them?

(6) A: I think Dr. Nilsen gave me like a one-page
(7) topic summary of what they discussed. I don't
(8) recall anything else. I know I didn't sit down
(9) with Dr. Nilsen and talk at great length about
(10) the meeting.

(11) Q: What do you remember from the document
(12) summarizing the meeting?

(13) A: I don't remember it.

(14) Q: Is that a document you still have in your
(15) possession?

(16) A: Yeah, it might be.

(17) MR. ROTHSCHILD: I request the production
(18) of that document.

(19) MR. GILLEN: Sure.

(20) BY MR. ROTHSCHILD:

(21) Q: Is it your understanding from receiving The
(22) Myth of Separation and getting a report on the
(23) views of Mr. Bonsell that Mr. Bonsell is trying
(24) to change the social studies curriculum to
(25) present a view about the founding that is more

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(1) religious in nature than is currently being
(2) taught?

(3) MR. GILLEN: Objection, calls for
(4) speculation.

(5) A: I haven't had that conversation with Mr.
(6) Bonsell. The only thing, when I first came on
(7) in 2002/2003 I know Mr. Bonsell did hand me a
(8) copy of one of George Washington's — his
(9) inaugural address or his speech and did express
(10) concern that he wanted to make sure that in our
(11) curriculum our students were being taught about
(12) our founding fathers and were being taught
(13) about the Constitution. I don't remember
(14) having a conversation with Mr. Bonsell about
(15) separation of church and state.

(16) BY MR. ROTHSCHILD:

(17) Q: Was there something specific in the inaugural
(18) address he was calling your attention to?

(19) A: No, not that I recall.

(20) Q: So it's just he wanted the inaugural address
(21) read, whatever it said?

(22) A: I don't know that he wanted it read. It was
(23) just a document he gave me that he felt was
(24) important.

(25) Q: And is that something you still have in your

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(1) understanding that her expertise in creationism
(2) and Bible science would be useful for you?

(3) A: No.

(4) Q: During the course of this testimony you've
(5) described how Mr. Bonsell has expressed some
(6) issues or concerns relating to the social
(7) studies curriculum. Has any individual board
(8) member or the board as a whole identified any
(9) other curriculum issues which they have
(10) concerns or issues about?

(11) A: I would say that differently. I don't know
(12) that Mr. Bonsell reviewed the social studies
(13) curriculum. He just thought it was important
(14) that in a curriculum the Constitution is taught
(15) and the founding fathers are taught.

(16) Q: And he also, apparently, sent this book, Myth
(17) of Separation, to the administration?

(18) A: I believe he gave that to Dr. Nilsen, yes.

(19) Q: Other than that and what we've discussed about
(20) the biology curriculum can you think of any
(21) other aspects of curriculum where the board or
(22) individual board members has expressed
(23) concerns, raised issues or made suggestions
(24) about how the curriculum should be changed?

(25) A: Again, Mrs. Brown did have concerns with the

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(1) family consumer science curriculum, the
(2) foundations of that curriculum. In fact, at
(3) one point Mrs. Brown reviewed the entire
(4) program studies for the high school and made
(5) suggestions that we return to some former
(6) curriculum courses that had been deleted in the
(7) current years.

(8) Q: What about limiting the question to current
(9) members of the board, other than what you've
(10) already described, do you have any further
(11) answer to my question?

(12) A: What's the question?

(13) Q: The same question that you responded with
(14) discussion about Mrs. Brown, have the board or
(15) individual board members raised concerns or
(16) issues about any aspect of any curriculum item
(17) or made suggestions about how the curriculum
(18) should be added to, modified or subtracted
(19) from?

(20) A: I can only think of Mr. Bonsell and social
(21) studies.

(22) MR. ROTHSCILD: Those are all my
(23) questions. Do you have any, Pat?

(24) MR. GILLEN: I just have a few.

(25) EXAMINATION

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BY MR. GILLEN:

(1) Q: Eric was just asking about subjects in the
(2) curriculum. I wanted to ask you, has any board
(3) member expressed concerns about the curriculum
(4) touching on sex education?

(5) A: Yes. That — yes.

(6) Q: Okay. I thought that perhaps at this moment in
(7) time you weren't remembering that.

(8) I think this is clear from your testimony,
(9) but I just want to ask you for the record. At
(10) any point in —

(11) A: If I could interrupt. There is a current board
(12) member, Mrs. Geesy, who did express concern
(13) about inhalants in that curriculum piece. It's
(14) the health curriculum.

(15) Q: At any point in this process did any board
(16) member direct you to take steps to implement
(17) the teaching of creationism?

(18) A: No.

(19) MR. GILLEN: I have no further questions.

EXAMINATION

BY MR. ROTHSCILD:

(20) Q: Which board members raised issues about the
(21) teaching of sex education?

(22) A: When I came to the Dover district the math

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(1) curriculum and the health curriculum were under
(2) review and they were implemented in the year I
(3) started, 2002/2003.

(4) So those concerns were communicated to me
(5) by Dr. Nilsen as having come to him during his
(6) role as assistant superintendent in bringing
(7) those curriculums to review and revision. So I
(8) don't — I'm not aware of particular board
(9) members' names who raised the issues.

(10) Q: Were you aware of the nature of the issue?

(11) A: Generally it has to do with contraceptives and
(12) abstinence and how much information you should
(13) give students about that information for them
(14) to make good decisions.

(15) Q: And do you have an understanding of what the
(16) board members who raised concerns, what their
(17) preference was?

(18) A: No, I don't, I don't remember that.

(19) Q: The question I'm going to ask you right now I'm
(20) not trying to solicit any communications that
(21) happened with counsel or in the presence of
(22) counsel. So putting any communications that
(23) fit that description aside, has there been any
(24) discussion — are you aware of any discussion
(25) by the board or among board members about

Counter Designation

In The Matter Of:

COPY

*Tammy Kitzmiller, et al. v.
Dover Area School District, et al.*

*Michael Baksa
March 9, 2005*

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(1) Q: After June or it could have been in June?
 (2) A: It could have been in June, yeah.
 (3) Q: Do you remember the circumstances in which you
 (4) heard about intelligent design? Was it, for
 (5) example, a public school board meeting, a
 (6) discussion with a school board member or
 (7) otherwise?
 (8) A: I don't.
 (9) Q: Do you remember anything about the substance of
 (10) what you heard the first time you heard about
 (11) it?
 (12) A: No.
 (13) Q: The first time you heard about it, was it in
 (14) the context of the Dover Area High School
 (15) biology curriculum?
 (16) A: I don't remember that.
 (17) Q: When was the first time you heard of the book
 (18) Of Pandas and People?
 (19) A: When Bill gave it to me, Mr. Buckingham.
 (20) MR. ROTHCHILD: Let me mark this document
 (21) as P-9.
 (22) (P Deposition Exhibit Number 9 marked for
 (23) identification.)
 (24) BY MR. ROTHCHILD:
 (25) Q: Do you recognize the document we've marked as

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(1) P-9?
 (2) A: Yes.
 (3) Q: Is this a memorandum that you received on or
 (4) around April 1st, 2003 from the principal,
 (5) Trudy Peterman?
 (6) A: Yes.
 (7) Q: Could you review this document and let me know
 (8) whether there's anything in it that you —
 (9) well, review the document and let me know
 (10) whether there's anything in it you think is
 (11) incorrect.
 (12) A: Okay. There are a number — just the first two
 (13) pages or do you want me to do the rest?
 (14) Q: I think we can probably just look at the first
 (15) two pages for purposes of my question.
 (16) A: There are a number of errors and inaccuracies.
 (17) Q: Could you describe them?
 (18) A: First, Trudy — Dr. Peterman was not at the
 (19) meeting — was not at the — or was not present
 (20) when I had a conversation with Mrs. Spahr that
 (21) generated this memo.
 (22) I never told Mrs. Spahr that the board
 (23) wanted creationism taught. Dr. Peterman in
 (24) many instances overreacts to instances and
 (25) jumps the gun and I think this is a good

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example of that.
 (2) My conversation with Bert Spahr was simply
 (3) a heads up that there was still, you know, some
 (4) talk about some board members of presenting
 (5) some alternative theory. I did not say that
 (6) there was creationism, nor did any board member
 (7) ever say to me that they wanted creationism
 (8) taught in the classroom.
 (9) Additionally, she talks about creationism
 (10) should still be — Dr. Peterman says I advise
 (11) and continue to mention that creationism is
 (12) another alternate theory of evolution. That's
 (13) Dr. Peterman acting on her own.
 (14) The only information I have is that I did
 (15) know that some of our teachers before teaching
 (16) the evolution unit would mention other
 (17) theories. They might mention creationism, but
 (18) there was no — at this point there was no
 (19) directive from the board or administration for
 (20) them to do so.
 (21) So the way I reacted to this is I ignored
 (22) this because the board was not putting forth
 (23) any definite plans or content or curriculum to
 (24) be implemented.
 (25) Mr. Bonsell at a board retreat, where

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(1) there's administrators all around, had, just in
 (2) talking about something, mentioned this 50/50.
 (3) He did not talk to me personally about that,
 (4) nor direct that to happen. And I simply took
 (5) that back to Bert Spahr just to give her a
 (6) heads up that there are board members that are
 (7) still looking at alternatives that are being
 (8) presented.
 (9) Q: You've got a lot packaged in here. First of
 (10) all, you said ignored this. Can I take from
 (11) that that you did not respond to Ms. Peterman?
 (12) A: Correct.
 (13) Q: Verbally or in writing?
 (14) A: Correct.
 (15) Q: Did you have any follow-up conversation with
 (16) Ms. Spahr in reaction to this memo?
 (17) A: That I don't remember, but I would be talking
 (18) to Mrs. Spahr continually anyway as long as
 (19) there was some interest in presenting
 (20) alternative theories and since we were working
 (21) on the science curriculum.
 (22) Q: This is a memo from April 1st, 2003 and you
 (23) said — the way you started your answer was
 (24) that there was still some talk about presenting
 (25) an alternative theory. What do you mean still

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[1] made that statement?

[2] A: We're reading that statement making students
[3] aware of intelligent design and that there's a
[4] book in the library, if they wanted to research
[5] that they could.

[6] Q: When the statement is read to the students and
[7] they are being made aware of intelligent
[8] design, is it your testimony that that is not
[9] teaching the students?

[10] A: Yes.

[11] Q: What do you call that doing?

[12] A: Making them aware.

[13] Q: Do you understand the students to be learning
[14] when that statement is made?

[15] A: They're learning that they're aware of a book
[16] in the library.

[17] Q: So they're learning, but not being taught?

[18] A: Correct.

[19] Q: In the news article I was asking you to look at
[20] a couple of paragraphs down it says, The
[21] district has not rejected the proposed new
[22] textbook, Baksa said, but it will continue to
[23] look for a book that will make everyone happy.
[24] Was that an accurate characterization of
[25] what you said?

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[1] A: Yes.

[2] Q: And when you were referring to the proposed new
[3] textbook, were you referring to the Miller
[4] Levine book recommended by the teachers?

[5] A: Yes.

[6] Q: And when you said that the district is
[7] continuing to look for a book that will make
[8] everyone happy, what did you mean by that?

[9] A: A book that would be acceptable to the board
[10] curriculum committee and the teachers.

[11] Q: What was your understanding of what it would
[12] take in a book to make everyone happy?

[13] A: I think the board curriculum committee was
[14] concerned with the presentation of Darwin and
[15] so they were examining the chapters that dealt
[16] with Darwin.

[17] Q: And what was your understanding of what they
[18] were concerned about?

[19] A: That Darwin was taught as a fact and that it
[20] was overstated as a given with no mention of
[21] any shortcomings or gaps or problems.

[22] Q: And did you personally ever review the biology
[23] textbook to reach your own conclusion about
[24] whether the book, in fact, did identify gaps or
[25] shortcomings in the theory?

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[1] A: Yes.

[2] Q: And what conclusion did you come to?

[3] A: The 2004 edition of the Miller Levine does
[4] mention gaps.

[5] Q: Is that different from earlier versions being
[6] used by — that were being used by the school
[7] district?

[8] A: The 2004 edition of the Miller Levine made a
[9] number of changes that softened the
[10] presentation of Darwin.

[11] Q: So, in fact, the textbook that the teachers
[12] were recommending did, in fact, address what
[13] the school board was worried about, whether the
[14] gaps and shortcomings were being identified?

[15] MR. GILLEN: Objection to the question.
[16] It's misleading, characterizes the board's
[17] position without adequate foundation.

[18] BY MR. ROTHCHILD:

[19] Q: You can answer.

[20] A: The teachers recommended the 2004 Miller Levine
[21] and the board approved that text.

[22] Q: And that text does identify gaps, correct?

[23] A: Yes.

[24] Q: And shortcomings?

[25] A: I don't remember the word shortcomings being

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[1] used, but gaps is used.

[2] Q: Okay. So given that the book identifies gaps,
[3] is there any reason why the students needed to
[4] be told separately Darwin's theory has gaps —

[5] MR. GILLEN: Objection, calls for
[6] speculation.

[7] BY MR. ROTHCHILD:

[8] Q: — in the statement that you read to the
[9] students on January 18th?

[10] A: Could you ask that again?

[11] Q: Yes. If the book identifies gaps in Darwin's
[12] theory of evolution, why is the district making
[13] a point to tell the students in a statement
[14] read before the subject of evolution is covered
[15] Darwin's theory has gaps?

[16] MR. GILLEN: Objection, calls for
[17] speculation.

[18] A: I was directed to work with the board and the
[19] teachers to develop a statement that the
[20] teachers would read to address the concerns
[21] that Darwin's theory is not taught as a fact,
[22] that other alternative theories of evolution
[23] were presented and that students being made
[24] aware of the book Of Pandas and People and that
[25] resulted in that statement being — having

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[1] the curriculum, nobody has ever done that in
 [2] any meetings of the board or the board
 [3] curriculum committee?

[4] A: Nobody has.

[5] Q: Said here's why we should present intelligent
 [6] design to the students.

[7] A: Intelligent design was suggested just to be as
 [8] an example of one of the other theories,
 [9] alternative theories other than Darwin's.

[10] Q: Mr. Baksa, I could suggest that another theory
 [11] of the development of species is they were all
 [12] made out of playdough, right, I mean I could
 [13] say that, right, and you would agree with me
 [14] that that's a scientifically unsound
 [15] proposition? Is that fair?

[16] A: Are we talking about playdough now?

[17] Q: I'm not talking about the philosopher. I'm
 [18] talking about the stuff that's like clay.

[19] A: In the discussions about language that we would
 [20] use, intelligent design was brought up as when
 [21] we're making students generally aware of other
 [22] theories, intelligent design was brought up as
 [23] an example. And I don't remember presenting it
 [24] in that way that being challenged. I think
 [25] that was generally accepted.

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[1] Q: Okay. But I assume that when you're trying to
 [2] develop science curriculum you're actually —
 [3] and you're making students aware of other
 [4] theories you're trying to make them aware of
 [5] scientific theories, correct?

[6] A: Yes. And it was my understanding at the June
 [7] meeting that the teachers were okay with
 [8] language that included intelligent design. So
 [9] I would have — again, my goal was to try to
 [10] come to some agreement between the concerns of
 [11] the board and the language teachers could live
 [12] with. So I thought we — that was acceptable
 [13] to them.

[14] Q: Okay. But at that June meeting nobody
 [15] explained what intelligent design was or what
 [16] its status was in the scientific community at
 [17] large or anything like that?

[18] A: I don't remember any of them doing that.

[19] Q: And that never happened after that either,
 [20] correct, as far as you know?

[21] A: Yes.

[22] Q: I'm correct?

[23] A: You're correct.

[24] Q: And originally it was your understanding that
 [25] the science teachers were okay with this

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[1] language, but in August it turned out that
 [2] regardless of what they had said before,
 [3] they're not okay with it?

[4] A: Correct.

[5] Q: And other than Ms. Spahr indicating that the
 [6] teachers hadn't been consulted and didn't agree
 [7] with this, did she explain what's wrong with
 [8] intelligent design?

[9] A: Mrs. Spahr from the very beginning, from
 [10] documents 897, which include reference to
 [11] intelligent design, in my conversations with
 [12] Mrs. Spahr she made no distinction between
 [13] intelligent design and creationism. For her
 [14] they were synonymous.

[15] Q: And did she explain why she held that view?

[16] A: From her research that she had done she felt
 [17] that legally we would not be able to teach
 [18] intelligent design because it's just
 [19] creationism.

[20] Q: And did she express that view at either this
 [21] June board meeting or — the June curriculum
 [22] committee meeting or the August curriculum
 [23] committee meeting?

[24] A: I know she did to me. I'm not sure if she did
 [25] at either of those other meetings.

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[1] Q: In these notes from this August meeting on Page
 [2] 58 it says, Call Russell - did they say what
 [3] schools are using it.

[4] Did you make an inquiry to the solicitor
 [5] about whether other schools were using this
 [6] textbook?

[7] A: We did ask our solicitor to see if there were
 [8] any other schools using the book, to give us an
 [9] opinion on its use as a classroom set or to
 [10] distribute it to each individual student, if
 [11] there were any cases involving the teaching of
 [12] intelligent design and also asked for a
 [13] specific law firm's history.

[14] Q: And was that the Thomas More Law Center?

[15] A: I think so, yes.

[16] Q: In terms of finding out whether other schools
 [17] used it, did you get an answer to that
 [18] question?

[19] A: The only school that I found — that came to my
 [20] attention that used it was Tomball.

[21] Q: Did you also make a call to anybody at Liberty
 [22] University relating to intelligent design or
 [23] Pandas, a Dr. Gillen maybe?

[24] A: Yes. Dr. Gillen taught at Tomball.

[25] Q: In the answers to interrogatories it says that

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statement that was read to students in the biology classes, that a theory in science is a general conclusion or assumption drawn after observation.

Q: And, you know, the students are being taught it's a theory, not a fact. And that language is not being used for any other theory that's being taught to Dover students, correct? The curriculum hasn't changed so that students are told that germ theory is a theory, not a fact, or the theory of gravity is a theory, not a fact, or atomic theory is a theory not a fact. Right?

A: That's correct.

Q: Only evolution is being singled out. Is that fair?

A: That's correct.

Q: Has anybody in the board ever communicated why of all the scientific concepts being taught to Dover students evolution is being singled out for the qualification that it's a theory, not a fact?

A: Not to me.

Q: And in your understanding of the scientific terms of theory and fact, could a scientific

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theory ever graduate to a fact?

A: I have no idea in the scientific world what qualifies something to move from one stage to another or even what the definition of either of them might be in the scientific world.

Q: Did any school board member ever explain why they wanted language that it was a theory, not a fact?

A: Nothing other than they felt that that was an erroneous presentation in the textbook, to present it as such.

Q: What was erroneous?

A: That it was being presented as a fact when, in fact, it's a theory that still hasn't been ultimately proven to be a fact.

Q: In all the page sites that school board members called to your attention did they ever show you text in the textbook that was adopted in which evolution was called a fact, not a theory?

MR. GILLEN: Objection to the characterization of his testimony to the extent it implies more than one board member did that. Answer, Mike.

A: Could you —

BY MR. ROTHSCHILD:

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Q: Did any school board member ever pick up this textbook and say, look, in here it says that evolution is a fact, not a theory or it's a fact and a theory? Is there any text that they pointed you to that made that assertion?

A: I don't remember specific pages, but I do think I remember both Mr. Bonsell — I know for sure Mr. Bonsell felt that there was language in there — I remember him saying that there was talk about evolution without saying it's a theory, that they were omitting the word theory. So he felt that strengthened the case to present it as a fact. And Mr. Bonsell would have been looking at the edition before the 2002.

Q: But that wouldn't really matter for the curriculum item you developed because the edition you were using was the 2004 edition, correct?

A: In August, yes.

Q: And Mr. Baksa, I'm looking at the teacher's version of the biology textbook, but I am fairly confident that in this respect it's similar to the student's version, that, in fact, the heading, as you start your study of

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evolution, is Darwin's Theory of Evolution.

A: Um-hum.

Q: So in that respect it's not misleading the students at all, it's in marquee and klieg lights presented as a theory, correct?

A: I have no idea.

Q: Do you understand intelligent design to be a scientific theory?

A: I understand professors like Michael Behe at Lehigh University are either proponents or researchers for intelligent design. My knowledge of intelligent design and the scientific community is fairly limited. I haven't been exploring it for a long period of time. So I don't know that I could fully answer that other than knowing a few individuals who are involved in intelligent design.

Q: Do you understand that there's a distinction between something that scientists say and something being a scientific theory? Not everything scientists say is a scientific theory. You would agree with that, right?

A: Okay.

Q: Do you agree with that or do you just not know

[1] one way or the other?

[2] A: I mean, I'm not in a position to judge what the
[3] scientific community, how they — the standards
[4] they set and the judgments they make about
[5] their colleagues and their research and the
[6] status it has. I just have no knowledge of
[7] that.

[8] Q: And how would you — what would it take for you
[9] to feel qualified to answer the question
[10] whether intelligent design is a scientific
[11] theory? What expertise would you feel you
[12] would have to have or what resource would you
[13] feel you would need to look to to make a
[14] determination for yourself whether intelligent
[15] design is a scientific theory?

[16] A: I don't know.

[17] MR. GILLEN: Objection. It calls for
[18] speculation. If you can answer, do.

[19] A: Yeah, I don't know.

[20] BY MR. ROTHSCCHILD:

[21] Q: Do you feel that you could make a judgment
[22] about whether intelligent design is, in fact, a
[23] scientific theory by listening to the opinions
[24] of the members of the Dover Area School Board?

[25] A: I wasn't making — I wasn't asked to make a

[1] judgment. What I was asked to do was to work
[2] with the board curriculum committee and the
[3] whole board and the teachers to develop
[4] language that was agreeable in the curriculum,
[5] to find a textbook that was agreeable to both
[6] and to develop a statement that would be read
[7] to the students that would be agreeable to them
[8] and that was my role.

[9] MR. ROTHSCCHILD: Can we mark this as an
[10] exhibit, please?

[11] (P Deposition Exhibit Number 19 marked for
[12] identification.)

[13] BY MR. ROTHSCCHILD:

[14] Q: Do you recognize the document we've marked as
[15] P-19?

[16] A: Yes.

[17] Q: And what is it?

[18] A: This is a news release that the district sent
[19] to all of our residents.

[20] Q: And who prepared this document?

[21] A: Dr. Nilsen.

[22] Q: Did you have any involvement with it?

[23] A: No.

[24] Q: Do you know if anybody else had any involvement
[25] with it?

[1] A: I believe my secretary Amy Aumen formatted it.
[2] Q: Do you know whether Mr. Nilsen created this on
[3] his own or with the aid of others?

[4] A: I believe he created this in conjunction with
[5] Thomas More.

[6] Q: If you turn to the second page there is a
[7] frequently asked question, What is the theory
[8] of Intelligent Design. And it says, The theory
[9] of intelligent design is a scientific theory
[10] that differs from Darwin's view and is endorsed
[11] by a growing number of credible scientists.

[12] Do you know what the Dover Area School
[13] District based its assertion that intelligent
[14] design is a scientific theory on?

[15] A: No.

[16] Q: Going back to the development of curriculum.
[17] Out of this August meeting you had taken on the
[18] task to develop an edition to the curriculum
[19] with the teachers, correct?

[20] A: Yes.

[21] Q: And did that, in fact, occur?

[22] A: Yes.

[23] Q: And in terms of who actually created the text
[24] for it, who did that, you, the teachers or
[25] both?

[1] A: I wrote a first draft and I gave it to the
[2] teachers.

[3] (P Deposition Exhibit Numbers 20 and 21
[4] marked for identification.)

[5] BY MR. ROTHSCCHILD:

[6] Q: Do you recognize the two exhibits we've marked
[7] as 20 and 21?

[8] A: 20 and 21? I don't have these.

[9] Q: Exhibits 20 and 21.

[10] MR. GILLEN: Yes, you do.

[11] A: Oh, oh.

[12] BY MR. ROTHSCCHILD:

[13] Q: And are these the product of your work with the
[14] science department on developing a modification
[15] to the biology curriculum?

[16] A: Yes, but not entirely.

[17] Q: And what's missing?

[18] A: There's another teacher draft.

[19] Q: And chronologically here where does that
[20] teacher draft fall, before September 20th,
[21] before September 21st?

[22] A: It would be a draft created on October 18th.

[23] Q: October 18th, okay. So up till — sorry, I'll
[24] back up. Am I correct that the documents we're
[25] looking at as 20 and 21 are identical except

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- [1] And I believe I remember Mrs. Spahr
[2] talking and Mrs. Miller talking. I can't say
[3] whether it was before the vote or after the
[4] vote.
- [5] Q: Did anybody who was advocating a vote for
[6] version I guess it was 11A get up and speak in
[7] support of it?
- [8] A: No, I don't remember anyone saying anything for
[9] 11A.
- [10] Q: In articles after the resolution was voted on
[11] ~~and~~ ~~ringing~~ has been quoted as saying that
[12] ~~members~~ of the board suggested that she would
[13] be atheist or unChristian if she didn't vote
[14] for the intelligent design resolution. Did you
[15] observe any remarks of that kind?
- [16] A: Yeah.
- [17] Q: And Casey Brown has been quoted as saying that
[18] school board members asked her whether she is
[19] born again. Did you observe anything like
[20] that?
- [21] A: No.
- [22] Q: Are you aware that the Discovery Institute
[23] released a press release criticizing Dover for
[24] passing the resolution it did?
- [25] A: Yes.

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- [1] Q: And how did you become aware of that?
- [2] A: I don't remember that.
- [3] Q: Did you participate in any discussions with
[4] anybody at the school district or school board
[5] about the Discovery Institute taking that
[6] position?
- [7] A: I might have talked to Dr. Nilsen about it.
- [8] Q: And describe your conversation.
- [9] A: I really don't recall specifics of that
[10] conversation. I just know that we did
[11] recognize that they had this press release, but
[12] I don't really recall specifically what we
[13] talked about.
- [14] Q: Are you aware that members of the Discovery
[15] Institute communicated with the school district
[16] directly about their curriculum change?
- [17] A: Yes.
- [18] Q: Have you participated in any of those
[19] discussions?
- [20] A: I was at a meeting with a representative from
[21] the Discovery Institute.
- [22] Q: And when did that meeting occur?
- [23] A: I guess prior to — sometime after the October
[24] 18th I think.
- [25] Q: Was it prior to or after the lawsuit was filed?

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- [1] A: Prior to.
- [2] Q: Where did that meeting occur?
- [3] A: At the administration office conference room.
- [4] Q: Who was there?
- [5] A: I was, Dr. Nilsen, Mr. Bonsell and I believe
[6] Mr. Buckingham and Mrs. Harkins.
- [7] Q: Who participated on behalf of the Discovery
[8] Institute?
- [9] A: I forget his name.
- [10] Q: Was it someone named Seth Cooper?
- [11] A: Yes.
- [12] Q: Do you know who initiated the meeting?
- [13] A: No.
- [14] Q: Was the discussion about the legality of
[15] teaching of the curriculum or the pedagogical
[16] merits of the curriculum?
- [17] A: The discussion, Discovery Institute felt that
- [18]
- [19] MR. GILLEN: Wait. To the extent you
[20] understood you were receiving legal advice from
[21] Mr. Cooper with the board meeting, as a board
[22] for the purpose of getting that legal advice,
[23] don't disclose that information.
- [24] BY MR. ROTHSCILD:
- [25] Q: I think I asked you the question, the

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- [1] foundation for that, was the discussion of the
[2] board curriculum in the nature of did you
[3] discuss whether the change was legal or did you
[4] discuss the scientific or pedagogical merits of
[5] the change of the board curriculum?
- [6] MR. GILLEN: You can answer that.
- [7] A: Legal.
- [8] BY MR. ROTHSCILD:
- [9] Q: Only legal?
- [10] A: Yeah, I would say so, yeah.
- [11] Q: Do you have any knowledge of how this meeting
[12] was arranged?
- [13] A: No.
- [14] Q: Do you know who arranged the meeting?
- [15] A: No.
- [16] Q: When this meeting began, and I'm going to tread
[17] carefully here. So, you know, try an answer
[18] just my limited question. We'll take it step
[19] by step. Who began the discussion?
- [20] A: I think it was Mr. Cooper.
- [21] Q: Was there any part of that discussion that
[22] included discussion that the Discovery
[23] Institute would represent the school district
[24] in any litigation over the policy?
- [25] MR. GILLEN: Eric, based on the

(1) The Myth of Separation by David Barton to
 (2) review from board members. Why did you call
 (3) his attention to that fact in response to this
 (4) e-mail?
 (5) A: Generally, his e-mail speaks to the involvement
 (6) of the board in the curriculum. And, you know,
 (7) the board — what I was saying back to Mr. Neal
 (8) is that social studies is next year and Mr. —
 (9) I believe it was Mr. Bonsell has already
 (10) expressed concerns about aspects of the social
 (11) studies curriculum.

(12) At this point Mr. Neal is aware of that.
 (13) Dr. Nilsen and Mr. Bonsell did meet with Mr.
 (14) Hoover and Mrs. Neal and discuss aspects of the
 (15) curriculum and I believe Mr. Hoover was
 (16) familiar with the book and had read the book
 (17) already.

(18) Q: Was it Mr. Bonsell who gave you — you said you
 (19) were given this book by the board members. Who
 (20) were the board members who gave it to you?

(21) A: I think it was just Mr. Bonsell.

(22) Q: And did he say anything to you when he gave you
 (23) this book?

(24) A: Actually, it might have been given to — I
 (25) don't remember him saying anything to me and it

(1) actually might have been given to Dr. Nilsen
 (2) first and he gave it to me. I don't remember.

(3) Q: And in your e-mail you say feel free to borrow
 (4) my copy to get an idea of where the board is
 (5) coming from. At the time you sent this e-mail
 (6) had you examined the book?

(7) A: Just skimmed it.

(8) Q: And what did you mean by, you know, get an idea
 (9) of where the board is coming from?

(10) A: Just that reading the book might help explain
 (11) what concerns the board might have in our
 (12) existing social studies curriculum.

(13) Q: I mean, having skimmed the book and heard from
 (14) Mr. Bonsell, what did you understand those
 (15) concerns to be?

(16) A: I never met with Mr. Bonsell about this.

(17) Q: Do you know what The Myth of Separation is
 (18) about?

(19) A: In a vague sense.

(20) Q: What's that?

(21) A: That the separation of church and state might
 (22) never have been the clear intent of our
 (23) founding fathers. I couldn't explain it more
 (24) than that.

(25) Q: And you said that there's since been meetings

(1) with you and Mr. Bonsell and Mr. Hoover and Mr.
 (2) Neal?

(3) A: No, I was never at those meetings.

(4) Q: Okay. So you were not part of them. Did
 (5) anybody report to you what was said in them?

(6) A: I think Dr. Nilsen gave me like a one-page
 (7) topic summary of what they discussed. I don't
 (8) recall anything else. I know I didn't sit down
 (9) with Dr. Nilsen and talk at great length about
 (10) the meeting.

(11) Q: What do you remember from the document
 (12) summarizing the meeting?

(13) A: I don't remember it.

(14) Q: Is that a document you still have in your
 (15) possession?

(16) A: Yeah, it might be.

(17) MR. ROTHCHILD: I request the production
 (18) of that document.

(19) MR. GILLEN: Sure.

(20) BY MR. ROTHCHILD:

(21) Q: Is it your understanding from receiving The
 (22) Myth of Separation and getting a report on the
 (23) views of Mr. Bonsell that Mr. Bonsell is trying
 (24) to change the social studies curriculum to
 (25) present a view about the founding that is more

(1) religious in nature than is currently being
 (2) taught?

(3) MR. GILLEN: Objection, calls for
 (4) speculation.

(5) A: I haven't had that conversation with Mr.
 (6) Bonsell. The only thing, when I first came on
 (7) in 2002/2003 I know Mr. Bonsell did hand me a
 (8) copy of one of George Washington's — his
 (9) inaugural address or his speech and did express
 (10) concern that he wanted to make sure that in our
 (11) curriculum our students were being taught about
 (12) our founding fathers and were being taught
 (13) about the Constitution. I don't remember
 (14) having a conversation with Mr. Bonsell about
 (15) separation of church and state.

(16) BY MR. ROTHCHILD:

(17) Q: Was there something specific in the inaugural
 (18) address he was calling your attention to?

(19) A: No, not that I recall.

(20) Q: So it's just he wanted the inaugural address
 (21) read, whatever it said?

(22) A: I don't know that he wanted it read. It was
 (23) just a document he gave me that he felt was
 (24) important.

(25) Q: And is that something you still have in your

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(1) understanding that her expertise in creationism
(2) and Bible science would be useful for you?

(3) A: No.

(4) Q: During the course of this testimony you've
(5) described how Mr. Bonsell has expressed some
(6) issues or concerns relating to the social
(7) studies curriculum. Has any individual board
(8) member or the board as a whole identified any
(9) other curriculum issues which they have
(10) concerns or issues about?

(11) A: I would say that differently. I don't know
(12) that Mr. Bonsell reviewed the social studies
(13) curriculum. He just thought it was important
(14) that in a curriculum the Constitution is taught
(15) and the founding fathers are taught.

(16) Q: And he also, apparently, sent this book, Myth
(17) of Separation, to the administration?

(18) A: I believe he gave that to Dr. Nilsen, yes.

(19) Q: Other than that and what we've discussed about
(20) the biology curriculum can you think of any
(21) other aspects of curriculum where the board or
(22) individual board members has expressed
(23) concerns, raised issues or made suggestions
(24) about how the curriculum should be changed?

(25) A: Again, Mrs. Brown did have concerns with the

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(1) family consumer science curriculum, the
(2) foundations of that curriculum. In fact, at
(3) one point Mrs. Brown reviewed the entire
(4) program studies for the high school and made
(5) suggestions that we return to some former
(6) curriculum courses that had been deleted in the
(7) current years.

(8) Q: What about limiting the question to current
(9) members of the board, other than what you've
(10) already described, do you have any further
(11) answer to my question?

(12) A: What's the question?

(13) Q: The same question that you responded with
(14) discussion about Mrs. Brown, have the board or
(15) individual board members raised concerns or
(16) issues about any aspect of any curriculum item
(17) or made suggestions about how the curriculum
(18) should be added to, modified or subtracted
(19) from?

(20) A: I can only think of Mr. Bonsell and social
(21) studies.

(22) MR. ROTHSCHILD: Those are all my
(23) questions. Do you have any, Pat?

(24) MR. GILLEN: I just have a few.

(25) EXAMINATION

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BY MR. GILLEN:

(1) Q: Eric was just asking about subjects in the
(2) curriculum. I wanted to ask you, has any board
(3) member expressed concerns about the curriculum
(4) touching on sex education?

(5) A: Yes. That — yes.

(6) Q: Okay. I thought that perhaps at this moment in
(7) time you weren't remembering that.

(8) I think this is clear from your testimony,
(9) but I just want to ask you for the record. At
(10) any point in —

(11) A: If I could interrupt. There is a current board
(12) member, Mrs. Geesy, who did express concern
(13) about inhalants in that curriculum piece. It's
(14) the health curriculum.

(15) Q: At any point in this process did any board
(16) member direct you to take steps to implement
(17) the teaching of creationism?

(18) A: No.

(19) MR. GILLEN: I have no further questions.

EXAMINATION

BY MR. ROTHSCHILD:

(20) Q: Which board members raised issues about the
(21) teaching of sex education?

(22) A: When I came to the Dover district the math

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(1) curriculum and the health curriculum were under
(2) review and they were implemented in the year I
(3) started, 2002/2003.

(4) So those concerns were communicated to me
(5) by Dr. Nilsen as having come to him during his
(6) role as assistant superintendent in bringing
(7) those curriculums to review and revision. So I
(8) don't — I'm not aware of particular board
(9) members' names who raised the issues.

(10) Q: Were you aware of the nature of the issue?

(11) A: Generally it has to do with contraceptives and
(12) abstinence and how much information you should
(13) give students about that information for them
(14) to make good decisions.

(15) Q: And do you have an understanding of what the
(16) board members who raised concerns, what their
(17) preference was?

(18) A: No, I don't, I don't remember that.

(19) Q: The question I'm going to ask you right now I'm
(20) not trying to solicit any communications that
(21) happened with counsel or in the presence of
(22) counsel. So putting any communications that
(23) fit that description aside, has there been any
(24) discussion — are you aware of any discussion
(25) by the board or among board members about